

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7050 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

PIYUSHKUMAR IRITKUMAR SHAH

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
Ms.Siddhi S. Talati, A.G.P. for Respondent No. 1
Mr.B.T.Rao, Advocate for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/12/98

J U D G E M E N T

1. In this writ petition under Article 226 of the Constitution of India two writs, one in the nature of

certiorary for quashing the detention order dated 15.7.1998 passed against the petitioner and another in the nature of Habeas corpus for immediate release of the petitioner from illegal detention have been prayed for.

2. Brief facts are that the District Magistrate, Ahmedabad in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the Act") passed the impugned detention order, Annexure : A to the writ petition, and simultaneously furnished grounds of detention to the petitioner as contained in Annexure: B. From the grounds of detention it appears that from the material produced before the Detaining Authority he came to subjective satisfaction that the petitioner was indulging in activities which were prejudicial to the maintenance of distribution arrangement of essential commodities like edible oil. Number of irregularities have been disclosed in the grounds of detention. One of such irregularities is that the petitioner was carrying on black marketing in ground-nut oil under false label of other brand and was earning undue profit at the rate of Rs.50/- more per Box than the fixed price for such edible oil. Hand machines, labels, empty boxes were also found from the premises where such activity was being carried on by the petitioner. The petitioner obtained licence to carry on business in edible oil, grains, pulse, etc. from particular premises, but he shifted his business to another place where raid was organised and no permission of competent Authority was obtained for change in the place of business. Statement of the petitioner was recorded by the Inspecting Team. Inter-alia the petitioner admitted before the inspecting team in his statement that he was adulterating low price oil in ground-nut oil and was earning illegal profit of Rs.50/per box. He also admitted that hand machines, labels, etc. were found in his premises so also empty boxes so that the oil may be sold under different brand. Improper accounts were also found maintained by the petitioner. The detaining Authority further found that the petitioner was storing the edible oil, an essential commodity, at an unauthorised place and was selling in black market at high price. Accordingly the impugned order was passed.

3. This order has been challenged by the learned Counsel for the petitioner on several grounds.

4. The first ground has been that since the detaining Authority mentioned in grounds of detention that the petitioner was indulged in adulteration of

ground-nut oil with low price other oil, no action under the Prevention of Black Marketing Act could be taken. According to his contention adulteration is an offence punishable under Section 7/16 of the Prevention of Food Adulteration Act and activity of adulterating food articles, may be essential commodity, is not covered under the Prevention of Black Marketing Act. Hence detention under Prevention of Black Marketing Act is illegal. It was further contended that inspite of using the word adulteration of edible oil by the petitioner at several places in the grounds of detention the detaining Authority did not record his satisfaction why action under the Prevention of Food Adulteration Act should not have been sufficient and adequate remedy against the petitioner. Another ground of attack has been that the detaining Authority has not properly considered why lesser drastic action against the petitioner like suspension of licence, its cancellation and prosecution of the petitioner u/s. 3/7 of the Essential Commodities Act could not have served the purpose and why drastic action of preventive detention was immediately required.

5. Another ground has been that there was delay on the part of the District Magistrate, the detaining Authority, in forwarding the representation of the petitioner to the State Government and this delay on the part of the Detaining Authority has not been explained, hence it has rendered the detention as well as continued detention of the petitioner illegal. Lastly it was contended that there was also delay by the Central Government in considering the representation of the petitioner and that one representation sent directly by the petitioner through his Advocate was not at all considered and this too has rendered the order of detention illegal.

6. So far as the first ground is concerned, I do not find from the grounds of detention that the detaining Authority proceeded to take action against the petitioner on account of adulterating the ground-nut oil with low price other brand of oil. On the other hand from Para : 2 of grounds of detention (Annexure : B) it is manifestly clear that the action against the petitioner was taken to stop his activity prejudicial in maintenance and distribution arrangement of essential commodities like edible oil. The following sentences in Annexure : B indicate in what manner the detaining Authority proceeded to take action against the petitioner. It reads as under:-

"As stated in the order of detention, your order

of detention is passed with intention to stop your activities which are in any manner prejudicial in maintenance and distribution arrangement of Essential Commodities like edible oil, very essential to the society and human life."

The detaining Authority was thus not inclined to take action under Prevention of Food Adulteration Act. The grounds of detention may not be happily worded, but that is not a ground to infer that the detaining Authority reached subjective satisfaction that adulteration of ground-nut oil was one of the nefarious and objectionable activity of the petitioner. At several places the words "adulteration and adulterating the stock of edible oil" have been used, but that does not mean that the detaining Authority was satisfied about adulteration of ground-nut oil. On the other hand these recitals were made in the grounds of detention on the strength of statement made by the petitioner to the Inspecting staff. At Page : 5 of the English translation of the grounds of detention inter-alia it is mentioned that you have declared in your statement taken during inspection on 3.6.1998 that all these materials, etc. are being used in your shop in the work of affixing on boxes and in that manner by preparing adulterated oil you are selling that such is declared. These recitals, therefore, show that whatever statement was made by the petitioner to the Inspecting staff was taken into consideration and since the petitioner himself admitted that the oil was adulterated at his instance the prescribing Authority mentioned in the grounds of detention. The statements recorded by the inspecting staff were placed before the detaining Authority and he was bound to disclose the entire statement of the petitioner by furnishing copy of such statement to him. If it would not have been done so, it could have been argued that complete materials were not furnished to the petitioner. If in the statement of the petitioner there was admission about adulteration the detaining Authority was duty bound to disclose it otherwise he would have been said to be guilty of suppressing material facts. Bogus and false labels found at the premises of the petitioner were not only admitted by him, but also by the Manager of the firm Motiram & Sons, Madhupura, Ahmedabad. His statement was also recorded by the Inspecting Staff. At Page : 11 of the English translation of the grounds of detention it is further mentioned that the purpose of making adulteration for saving ground-nut oil false accounts are written, that fact is admitted by you. This further shows that disclosure of adulteration was made on the admission of the petitioner. Further at Page : 10

of the english translation of the grounds of detention it is mentioned that the petitioner stated during inspection on 3.6.1998 that he purchased cotton-seed oil at Rs.635/to Rs.647/- mustard oil at Rs.626/-, ground-nut oil at Rs.665/- and vegetable Ghee at Rs.712/- and at the time of inspection in each brand the prices were increased at Rs.30/- to Rs.40/- and so for taking more price, for earning more profit you kept stock of edible oil with you and that it was unauthorisedly stored for selling by adulterating the same that fact is admitted by you. If in this background at Page : 7 of the grounds of detention the words "adulteration and adulterating the stock" are mentioned, it does not follow that the detaining authority was influenced in reaching subjective satisfaction that the petitioner was actually adulterating the ground-nut oil. Neither the Inspecting team nor the detaining Authority obtained services of food Inspector in collecting the samples nor the report of Public Analyst was obtained. Consequently at no point of time the Inspecting team took action against the petitioner under the Prevention of Food Adulteration Act merely on disclosure and admission made by the petitioner. It seems that in Gujarat, which is premier oil manufacturing State, there was great crisis and distribution of essential commodities was highly disturbed and oil which is an essential commodity was being sold at an exorbitant price and there was great resentment in the public due to such activity that this action was taken. This is clear from the recital in the grounds of detention that complaints were also received against the petitioner, from public at large that cottonseed oil, mustard oil and imported edible oil (Pamolene) of low price are being adulterated in the stock of ground-nut oil and by filling it in boxes by repacking them the dealers are selling that ground-nut oil for high price. This complaint was general in nature and on this ground inspecting team was sent to the business premises of the petitioner. Consequently from the recital reproduced in the forgoing portion of this Judgment it is clear that the detaining Authority came to the subjective satisfaction that the petitioner was storing ground-nut oil at a place other than the disclosed place of business and was storing the same for disturbing smooth supply of essential commodity, viz. ground-nut oil and was storing for earning more profit and was also found selling such commodity at a price higher by Rs.50/- per box than the fixed price which is disclosed at Page : 2 of english translation of the grounds of detention. It is for preventing this black marketing activity that the petitioner was placed under preventive detention.

7. Learned Counsel for the petitioner has vehemently argued on the basis of Division Bench pronouncement of this Court in Kishor Amratlal Patel v/s. Rajit Takru & ors., reported in XXVIII(2) 1987(2) G.L.R. 1031 that since the subjective satisfaction of the detaining Authority was also influenced by the activity of the petitioner in adulterating the ground-nut oil with other oil of cheap price it vitiated the subjective satisfaction which has rendered the detention order illegal so also the continued detention of the petitioner. After going through the entire ruling of the Division Bench aforesaid I am unable to agree with the arguments advanced by the learned Counsel for the petitioner. In this case there were as many as 13 grounds on which the detention order was passed. Ground No.12 was a specific ground regarding adulteration of ground-nut oil. On Ground No.12 it was found that on 16.2.1986 when two samples were taken by the Food Inspector, Rajkot from the stock of Kitchen Queen brand groundnut oil manufactured in the detenu's mill it was found that the groundnut oil manufactured by the detenu was not upto the standard required by the Prevention of Food Adulteration Rules and that showed that the detenu was indulging in manufacturing adulterated groundnut oil in his mill. This is distinguishing feature in the case before me. It was never the allegation of the Inspecting Staff or of the detaining Authority that the petitioner was actually adulterating groundnut oil. On the other hand adulteration was mentioned in the grounds of detention, on the basis of admission made by the petitioner in the statement given before the Inspecting team. Further, in this case neither samples were taken from the premises of the petitioner nor it was analysed by the public analyst nor was any report of the public analyst that the sample was adulterated and was not upto the standard required by the Prevention of Food Adulteration Rules. Since in the Division Bench Case the detaining Authority was also influenced by the fact of adulteration and manufacture of adulterated oil in the mill of the petitioner it was found that the entire detention order became illegal because adulteration of food article is beyond the scop of Section 3(1) of the Essential Commodities Act. The Division Bench observed that the Essential Commodities Act controls and regulates regular supply of essential commodities and it does not regulate the quality of essential commodity. It further observed that there is reference in the quality under the Food Adulteration Act and not under the Essential Commodity Act. Since in the case before me neither the Inspecting team nor the detaining Authority took any action to confirm the statement of the petitioner

regarding adulteration by getting the samples collected and analysed by the Public Analyst it can hardly be said that the subjective satisfaction of the detaining Authority was a composite subjective satisfaction also based on factum of adulteration. As such on the facts of the case before me factum of adulteration alleged in the grounds of detention can safely be separated inasmuch as it was nothing but disclosure of admission of the petitioner. I am, therefore, unable to accept the contentions that the detention order has been rendered illegal so also continued detention of the petitioner.

8. The next contention was that the detaining Authority did not consider why the lesser drastic remedy was not sufficient and why drastic action of placing the petitioner under preventive detention was the only remedy. This contention also cannot be accepted. At Page : 13 of the English translation of the grounds of detention it is mentioned that the Prescribed authority did consider alternative remedy. It observed that if licence is cancelled the petitioner may obtain stay order from the competent Court and continue his illegal activity. If licence is suspended then also similar activity can be continued by the petitioner for his benefit. It was also considered that prosecution u/s.3/7 or u/s.12-AA of the E.C.Act would also not be effective because in that event the petitioner may be released on bail and there was possibility of continuing such activities. In the Affidavit of the detaining Authority also it has been clearly mentioned in Para : 16 to the same effect. If the licence was suspended on 15.7.1997 as was argued by the learned Counsel for the petitioner, it does not mean that it was effective remedy. More over it was not in the knowledge of the detaining Authority while passing of the impugned order that the licence was suspended on that very date. Moreover the detaining Authority has considered that suspension or cancellation of the licence of the petitioner could not have been the effective remedy because the petitioner could have obtained stay order from the Court.

9. It was next argued that no reason was recorded by the Detaining Authority why the action under prevention of Food Adulteration Act could not have been sufficient remedy. It may be mentioned that once the detaining Authority had considered alternative remedy and had undergone this exercise the Court can not interfere in that exercise and can not observe that other alternative remedies were not considered. Remedy under the Prevention of Food Adulteration Act was not considered

because the detaining authority was not proceeding under the Prevention of Food Adulteration Act. If the detaining Authority would have proceeded under the Prevention of Food Adulteration Act then certainly this argument could be raised. More over same reasons will hold good for not taking action under the Prevention of Food Adulteration Act as have been given above while dealing with the first ground of challenge to the impugned order.

10. Existence of alternative remedy is no bar for taking action for preventive detention. However, the detaining Authority must indicate that while reaching subjective satisfaction he had undergone this exercise and had taken into consideration that such action like suspension and cancellation of the licence will not be sufficient on the given facts of the case. Once such exercise is undertaken by the detaining Authority the Court can not sit in Judgment to hold that on the material available the detaining Authority should not have taken such view on his subjective satisfaction. However, if this exercise is not done the detention order would be rendered bad as it will suffer from the vice of non-application of mind. In this connection the decisions in the cases of Parshottambhai Navalram Khemani v/s State of Gujarat reported in XXVI(2) 1985 (2) G.L.R. 620 and Ganeshbhai Gangabhai Harijan v/s. District Magistrate, reported in XXIV(2) 1983(2) G.L.R. 1016 can be referred.

11. For the reasons given above the detention order cannot be said to be invalid on the ground that the detaining Authority has not considered alternative efficacious remedy.

12. Another attack against the detention order is that there was delay on the part of the District Magistrate in forwarding the representation to the State Government. It was urged that the representation to the District Magistrate was given on 24.8.1998 which was forwarded by the District Magistrate to the State Government on 29.8.98 and this delay of four days has not been explained which has rendered the detention illegal. Few cases were cited on this point.

In Urmilaben Navnitlal Gandhi v/s. The Commissioner of Police, reported in 1994(2) G.L.H. (U.J.) 10 the representation of the detenu was received by the Detaining Authority on 14.10.1993 which was rejected on 15.10.1993. The representation was forwarded to the State Government on 16.10.1993. The office,

however, forwarded it to the State Government on 19th/21st October 1993, which was received by the State Government on 26.10.1993 and the same was rejected by the State Government on 27.10.1993. Five days delay between 16.10.1993 to 21.10.1993 in forwarding the representation by the District Magistrate was not explained. Hence this delay was found fatal. However, in the case before me from additional Counter Affidavit dated 20.11.1998, sworn on 21.11.1998, by the Detaining Authority this delay has been explained. In Para : 2 of Counter Affidavit it is stated that the representation dated 24.8.1998 filed by the Advocate of the detenu was received on 27.8.1998. This delay between 24.8.98 to 27.8.98 was not to be explained by the District Magistrate. He has to explain the delay from the date the representation was received in his office. The representation received on 27.8.1998 was sent to the Sponsoring Authority on 27.8.1998 itself at 3.45 p.m. for preparation of parawise remarks. It was received back on 28.8.1998. The office of the detaining Authority prepared typed copies of representation and parawise remarks on 29.8.1998 and sent the same to the State Government with letter dated 29.8.1998. In this way the delay between 27.8.1998 to 29.8.1998 has been explained. Therefore the case cited by the learned Counsel for the petitioner will not be helpful to the detenu. Likewise observations in Special Civil Application No.6454 of 1994, decided on 24.9.1998 by this Court do not help the petitioner. In this case there was seven days delay in forwarding the representation by the detaining Authority to the Additional Chief Secretary and no explanation of whatsoever nature was given by the detaining Authority as to why the representation was kept with him for more than six days. In the case before me each day's delay has been explained by the detaining Authority, hence this case also does not help the petitioner.

13. Another contention has been that there was delay on the part of the Central Government in dealing with the representation of the detenu sent directly by speed post through his Advocate and that the representation forwarded by the State Government to the Central Government was also not expeditiously disposed of by the Central Government which has rendered detention of the petitioner illegal. On the point of delay few cases were cited by the learned Counsel for the petitioner. The case of Harish Pahwa v/s. State of U.P. & ors. reported in 1981 (2) SCC 710 is, however, distinguishable on facts. In this case the delay was on the part of the detaining Authority in considering the representation and not on the part of the Central Government. The Apex

Court observed that there was no necessity for the detaining Authority to obtain opinion and assistance from other sections as well as from the Law Department of the Government and that the representation should have been dealt with expeditiously. The delay in considering the representation was caused by soliciting comments from other departments and allowing the representation to lie unattended. Consequently the principles of law laid down in this case apply to the detaining Authority who is evidently posted with all the materials and not the Central Government or the State Government which is required to be furnished material for taking decision on the representation.

14. The case of Dilipbhai Babubhai Kapadia v/s. District Magistrate, Surat, reported in 1984 (4) G.L.H. 1026 is regarding effect of delay on the part of the State Government in considering the representation and not on the part of the Central Government. It was observed that it is now well settled that a representation made by the detenu is required to be considered by the State Government with utmost expedition. In other words it must be taken up for consideration as soon as the same is received and dealt with continuously until a final decision is taken and communicated to the detenu. No valid explanation of delay in considering the representation came forward in this case. Hence the detention was held to be illegal. The Apex Court in various cases has considered the effect of such delay. In Harish Pahwa v/s. State of U.P., reported in AIR 1981 SC 1126 it was observed that the State Government is required to consider the representation of the detenu with utmost expedition. It should be taken up for consideration as soon as the same is received and dealt with continuously until a final decision is taken and communicated to the detenu. However, each day's delay in dealing with explanation must be adequately explained. This requirement is only to emphasise the expedition that each representation must be considered as early as possible. It is equally true that when the representation is made through the Government, it is required to be dealt with immediately. Any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order as was observed by the Apex Court in Vijay Kumar v/s. State of J. & K., reported in AIR 1982 SC 1023.

15. Thus, from the above pronouncements it can safely be said that the representation received by the State Government or for that matter by the Central Government

must be disposed of expeditiously and the process of expedition should be explained. The machinery should be set in motion and delay should be explained. If the delay remained unexplained then only the detention order becomes invalid as there is no explanation of delay.

16. Similar view was taken in Kanti Maneklal Rana V/s. The Commissioner of Police, reported in 1986 G.L.H. 460. Here also there was no valid explanation for non-consideration of representation for four days. Thus, because of non-explanation of delay the order of detention was considered to be invalid.

17. So far as Central Government is concerned two points were raised by the learned Counsel for the petitioner. The first was that the representation dated 24.8.1998 sent by the Advocate of the detenu to the Central Government was received on 27.8.1998 and this representation is not decided so far. Counter Affidavit of Shri Jatinderbir Singh, Director in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi, shows that no such representation was received from the Advocate on 27.8.1998 and that only one representation made by the advocate of the detenu dated 24.8.98 was received in the concerned section on 10.9.1998 through the State Government by Fax. In the additional Counter Affidavit of Shri A.L.Makhijani, Under Secretary, also it is stated that no such representation sent by the petitioner directly to the Central Government was received in the concerned section. Rejoinder Affidavit was filed duly supported by zerox copy of letter from Postal Department, Annexure : A, which shows that the concerned representation dated 24.8.98 was sent by Speed Post on 25.8.1998 and was delivered on 27.8.1998. In the face of this certificate it cannot be believed that the representation sent directly to the Central Government by the Advocate of the petitioner was not received in the concerned section. The question, however, is whether non-consideration of this representation has rendered petitioner's detention illegal. It may be mentioned that one representation dated 24.8.1998 was sent by the Advocate of the petitioner through the State Government and this representation was forwarded by the State Government to the Central Government. It could not be shown before me that the grounds taken in the two representations were different, viz. one sent directly by Speed Post and the another sent through proper channel. The law does not permit the detenu to go on making successive representations. If one representation was sent through Advocate and no additional fact or subsequent development

was mentioned in the representation sent directly to the Central Government it cannot be said that non-consideration of identical representation has rendered the detention order illegal or invalid.

18. So far as the representation sent by the State Government is concerned the Affidavit of Shri Jatinderbir Singh shows that representation dated 24.8.1998 was received in the concerned section through State Government by Fax on 10.9.1998. Parawise comments were received from the State Government earlier on 8.9.1998. However, there seems to be some mistake in this Counter Affidavit because representation was not received till 8.9.98, the State Government was required to send copy of representation. In any event copy of representation was received on 10.9.1998. It was considered expeditiously and was rejected on 11.9.1998 and telegraphic information was given to the detenu through the State Government and Jail Authority. There was thus no delay on the part of the Central Government in dealing with the representation dated 24.8.98, received through the State Government on 10.9.1998.

19. There was no delay on the part of the State Government in dealing with the representation of the petitioner dated 24.8.1998. Complete explanation is offered in para : 3 of the Counter Affidavit of Shri P.R. Shukla, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department. The said representation was rejected on 5.9.1998 and on the same day rejection order was communicated to the detenu. The details have been given in Para : 4 which show how the representation moved from 24.8.98 to 5.9.1998. It further seems from Para : 4 of this Affidavit that english version of representation of this date was sent to the Central Government by Speed Post on 4.9.1998 and parawise remarks on the said representation by another Speed Post on 5.9.1998. The affidavit of Shri Jitendrabin Singh admits that parawise comments were received on 10.9.1998. The postal delay between 5.9.98 to 10.9.98, both days inclusive, were not required to be explained by the Central Government. The Central Government was required to deal with the representation expeditiously from the date it received the same. It was received by the Central Government on 10.9.1998 and was rejected on 11.9.1998. Thus, there was no delay on the part of the Central Government in dealing with the representation of the petitioner.

20. No other point was pressed.

21. For the reasons stated above no grounds

challenging the validity of detention order could be substantiated by the learned Counsel for the petitioner as a result of which the petition is liable to fail. The writ petition is accordingly dismissed.

sd/-

(D.C.Srivastava,J.)

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